

REMARKS

The Office Action of July 1, 2004, has been received and reviewed. Claims 1-31, 34 and 35 are pending of which claims 5, 7 and 22 have been withdrawn from consideration as being drawn to a non-elected invention. Claims 2, 4, 8, 9 and 24-31 stand allowed and claims 1, 3, 6, 10-21, 23, 34 and 35 stand rejected. Claims 6, 12, 13 and 34 have been amended, claims 1, 3, 5, 7, 10, 17, 19-22 and 35 have been canceled, and new claims 36-39 have been added. All amendments and cancellations are made without prejudice or disclaimer. Reconsideration is requested.

Rejections under 35 U.S.C. § 102

Claims 1, 3, 6, 10-21, 23 and 34-35 stand rejected under 35 U.S.C. § 102(e) as assertedly being anticipated by Lassner et al. Claims 1, 3, 10, 17, 19-21 and 35 have been canceled rendering the rejections thereof moot. Applicants respectfully traverse the remaining rejections.

Although applicants do not agree with any of the rejections, to expedite prosecution, claims 6 and 12 have been amended to depend from allowable claim 4, claim 13 has been amended to be directed toward a genetically transformed plant seed having a nucleotide sequence encoding a polypeptide having diacylglycerol acyltransferase activity, wherein the sequence of the polypeptide comprises SEQ ID NO: 2, and claims 1, 3, 10, 17, 19-21 and 35 have been canceled without prejudice or disclaimer.

Submitted herewith is a declaration signed by Dr. David Taylor establishing that Lassner et al. does not disclose any working examples of transgenic plant seeds. Further, Lassner et al. does not provide guidance for one of ordinary skill in the art to make and use a plant seed having a nucleotide sequence encoding a polypeptide having diacylglycerol acyltransferase activity, wherein the sequence of the polypeptide comprises SEQ ID NO: 2. Thus, Lassner et al. does not have an enabling disclosure of a plant seed having a nucleotide sequence encoding a polypeptide having diacylglycerol acyltransferase activity, wherein the sequence of the polypeptide comprises SEQ ID NO: 2. Accordingly, Lassner et al. cannot anticipate any of claims 11, 13-16, 18, 23 and 34.

Reconsideration and withdrawal of the anticipation rejection of claims 6, 11-16, 18, 23 and 34 are requested.

New Claims

With regard to new claims 36-38, they are not anticipated because Lassner et al. does not have an enabling disclosure of a plant cell having means for encoding a polypeptide having diacylglycerol acyltransferase activity. The working examples of Lassner et al. are limited to ACAT-like sequences. (See, Lassner et al., Examples 7 and 8). Thus, new claims 36-38 should be allowable.

New claim 39 should be allowable as depending from allowable claim 4.

CONCLUSION

In view of the foregoing amendments and remarks, applicants respectfully submit that the claims define patentable subject matter and are now in condition for allowance. Should questions remain after consideration of the foregoing, the Office is kindly requested to contact the applicants' attorney at the address or telephone number given herein.

Respectfully submitted,



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